Decision Record
and
Finding of No Significant Impact
for the
Pryor Mountain Wild Horse Range

FY2005: Use of Fertility Control on Mares 11 Years of Age and Older to Suppress Herd Growth Rates
EA # BLM- MT-010-FY05-16

U.S Department of the Interior
Bureau of Land Management
Wild Horse and Burro Program
Billings Field Office
July 29, 2005

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I. DECISION:

Use of Fertility Control on Mares 11 Years of Age and Older For Partial Suppression of Herd Growth Rates

The Billings field manager has decided to apply fertility control to 20 age-specific older wild mares (11 years of age and older) for the purposes of partially suppressing herd growth rates, in order to manage for healthy horses on healthy rangelands. Given the current status of rangeland health on the Pryors (Ricketts, 2004), the management objective is to suppress herd growth in efforts to manage the herd closer to the existing appropriate management level (AML) of 95 ±10% horses. Natural mortality in the younger and older horses (including the unpredictable impacts of predation), coupled with the proposed level of fertility control, is expected to assist with this objective, without taking the herd below AML (table 1).

Under the Proposed Action, 20 mares aged 11 years and older would receive a primer and one booster dose of an immunocontraceptive Porcine Zona Pellucida (PZP) vaccine (figure 1). Seven of these older mares (15 years and older) were previously treated with PZP and will only receive a booster vaccine this summer. The remotely-delivered PZP two-shot application is expected to offer 90% efficacy for at least one year in these older mares. Since mares are boostered after the breeding season in the Pryors, the vaccine is not effective until the following breeding season and impacts foal production two years later. Summer 2005 pregnancy and foaling data (figure 1) indicate that 15 of these mares have foaled or will foal in 2005. Based on previous research with wild horses, any mare which conceives this year will not have their pregnancies disrupted by the PZP vaccine (Kirkpatrick and Turner, 2002).

Eighteen mares were boostered with PZP in 2003, and although not expected, four of these mares foaled this year (figure 1). Some mares (# 2120) appear to be naturally poor responders to the vaccine and probably never develop sufficient antibody titer levels to confer infertility (hence the 90% efficacy of the vaccine). Research with the Pryor herd further supports that immune response in mares may be correlated with age and fitness. One six year-old mare (# 9926) was contracepted due to poor physical condition in September 2003, responded poorly to the vaccine, conceived in 2004 and foaled in 2005. Similarly, two 16 year-old mares (#8912, 8913) boostered in 2003, also produced foals in 2005. Conversely, younger mares in good condition may have a stronger than expected antibody titer response resulting in a longer period of infertility. This appears to be the case with five mares born in 2000 and last boostered in 2002 (figure 2). To date, preliminary field data collected by trained observers show no detected differences in mare

position within the harem, distance from the stallion or estrus behavior between treated and untreated mares in this herd. This is consistent with results from other behavioral studies with wild horses (Powell, 1999). All of these young mares moved from their natal harems in fall 2002 with normal breeding activity occurring in 2004 and 2005. It is expected that pregnancy should occur in 2005 with the first foals born to these young mares in 2006.

The proposed PZP remote-delivery implementation is scheduled to begin in September 2005 and will continue until all mares have received a booster of PZP vaccine. All fertility control activity would be carried out according to current BLM and Science and Conservation Center (SCC-ZooMontana) policy, with the intent of conducting as safe and humane an operation as possible. In 17 years of PZP remote-delivery activity with wild horses (including 4 years on the Pryors), there has never been a reported incident or horse injury. However, if conditions warrant, and animal health or welfare is in jeopardy at any time, remote-darting operations would be delayed or halted and veterinary assistance available within a maximum time of 4 hours.

In addition, the Proposed Action would also adhere to all guidance and research protocol set by the BLM National Wild Horse Fertility Control Field Trial (FCFTP) program. Recommended actions incorporate proven protocol or standard operating procedures (SOPs) which have been developed for remote-delivery techniques of fertility control vaccine (FY2005 PZP EA, Appendix 4). These SOPs represent the "best methods" for ensuring quality results, minimizing risks and reducing impacts associated with this activity.

II. JUSTIFICATION:

Specific details pertaining to earlier decisions regarding the use of fertility control on the Pryors (AML, herd demographics, genetic viability, and reproductive fitness) were addressed within EAs # MT-010-01-44, MT-010-02-22, MT-010-03-14 and MT-010-04-18. The most recent decision is based on all relevant information to date as analyzed within EA MT-010-FY05-16. These documents, and attendant Decision Records, are available on the BLM national homepage http://www.blm.gov/nhp/spotlight/state_info/mt/pryor.html or by contacting BiFO.

Current estimates (7/27/05) place the population at 167 horses, including 28 live foals (figure 1). Although some level of natural attrition of older horses is always expected, and five horses remained unsighted this season (figure 1), it is estimated that the herd may be about 30-40 horses over AML (169 total head -30 foals - 5 missing horses) by fall 2005 (figure 1; table 2).

A total of 37 foals are expected this year (table 1). Typically this herd shows a moderate (recorded) foaling rate averaging ~52%, with significant variation in the surviving foaling rate (14 to 100%). Long-term trends in foal production indicate an average of 33 foals born per year with an average of 24 (71%) surviving foals. Foal survival is currently at 80% for 2005.

As of July 27, 2005, seven of 35 foals have been lost (20% of foal crop) from the herd. There is no evidence to suggest that these foal losses were the result of mountain lion predation. Management of wildlife populations lies with the State of Montana, whereas BLM is responsible for maintaining and improving wildlife habitat (BLM-MOU-MT923-0210). Hunting statistics

from Montana Fish, Wildlife and Parks indicate that one or two lions are removed annually from the Pryors, whereas in 2004/2005 three adult mountain lions were successfully hunted. Thus in the short-term it would appear that the threat of predation on the herd has been significantly reduced. Annual patterns of recorded foal loss in the herd (figure 3) also suggest that if predation was going to happen this year, the bulk of foal loss activity would have already taken place. There is currently no evidence that additional predators, other than those already identified, are impacting the horses.

This year, 37 of a possible 49 fertile mares have foaled or will foal. This translates to a 76% herd foaling rate, the highest ever recorded in history for this herd. This is likely a noteworthy population response to significant predation impacts on the foal crop (27 of 28 foals lost by early winter) in 2004. This response is consistent with other studies where foal removal resulted in compensatory reproduction (Kirkpatrick and Turner, 1991). On the Pryors, this response also resulted in an extremely high herd growth rate (17.6%) for 2005 (table 1).

Eighteen mares were boostered with PZP in 2003 and 14 of those mares (78% vaccine efficacy) did not produce a foal this year (figure 1; table 1). This lower efficacy is expected when the vaccine is applied in late summer and fall as opposed to just prior to the breeding season (Turner and Kirkpatrick, 2002). Only eight mares were boostered in 2004, as fertility control efforts were scaled back due to concerns over mountain lion impacts on the herd. Assuming a near normal foaling rate, the herd still has the capacity to produce about 30 foals in 2006 (table 1). It is possible that a few of the nine young mares born in 2001 and 2002 (figure 1) that were last boostered in 2003, may experience a second year of infertility in 2005. If this happens, it would reduce the estimated surviving foal crop by three foals in 2006 (table 1).

Treatments in 2005 will impact the number of fertile mares in 2006 and resulting foaling in 2007 (table 1; figure 1). Of the 20 mares proposed for treatment, all are older mares, and expectations are that there will be some poor responders to the vaccine in this group. Thus, at a minimum, 23 foals are expected in 2007. As a result, herd growth in 2006 and 2007, although reduced through the use of fertility control, is still expected to take herd size above the long-term average of 164 total head (table 1) and 50-70 horses above AML (table 2). If herd growth warrants, BLM plans to prepare an environmental assessment (EA) for a proposed population gather and removal of excess horses from the PMWHR in 2006.

The main advantage of using fertility control is the estimated reduction in annual growth rates (table 1) which will eventually reduce wide fluctuations in herd size. Fertility control also allows for a more even distribution of horses in all age classes which results in a larger percentage of core-breeding age animals within the herd. This age structure provides genetic advantages to smaller herds (Cothran, pers comm). Reduced herd growth also allows for longer periods of time between necessary gathers and removals to control herd size, and therefore reduces the loss of genetic diversity through removals of horses from the herd. Remote-delivery fertility control also results in fewer disturbances to the herd. The latter supports minimum feasible level of management as stated in the Wild Free-Roaming Horses and Burros Act (WFRHBA; PL 92-195), as amended, and reduces budgetary demands (Bartholow, 2004).

Temporary relief from a seven-year drought has resulted in some localized and short-term

improvements in forage response on the range in 2005. The US Drought Monitor http://nris.state.mt.us/drought (information posted July 19, 2005), however, still indicates moderate long-term drought conditions for the area, and range recovery may take several seasons of near normal or higher levels of precipitation. Available research suggests that continued grazing at pre-drought levels, during moderate drought, is probably the greatest cause of range deterioration (Vallentine, 1990). Reduced grazing levels, however, during moderate drought should result in less damage to the forage base and hasten its recovery following the drought. Thus, partial suppression of the herd growth rate through 2007 is necessary in order to assist in managing the herd in compliance with established management objectives (BLM-MT-PT-84-019-4321/June 1984)). Natural mortality in the younger and older horses (including the unpredictable impacts of predation), coupled with the proposed level of fertility control, is expected to assist with meeting these objectives, without taking the herd below AML (table 1).

III. ALTERNATIVES CONSIDERED

The Proposed Action and three alternatives represent a reasonable range of alternatives based on issues and goals previously identified through public scoping efforts and research specific to the PMWHR. The EA considered only one alternative in detail, the Proposed Management Action: Use of Fertility Control on Mares 11 Years of Age and Older for Partial Suppression of Herd Growth Rates. All other alternatives were considered up to the point where BLM determined the alternative would result in either unacceptable (measurable) impacts to animal and/or herd health and welfare or provided no additional measurable value to a previously analyzed alternative. Reasons for elimination from further consideration are provided in the EA under the relevant sections (EA #MT-010-FY05-16, Section IV. Alternative Management Actions, pp 15-17).

IV. USE AUTHORITY for the PZP VACCINE

The Humane Society of the United States (HSUS) has made the PZP vaccine available to the BLM under the Investigational New Animal Drug exemption (INAD #8857) filed with the federal Food and Drug Administration (FDA). As a condition of using the PZP vaccine, the HSUS expects the BLM to follow several criteria for immunocontraceptive use in wild horse herds that were recommended for implementation by the Wild Horse and Burro Advisory Board on April 23, 1999, and accepted by BLM on August 16, 1999. The BiFO, in its management of the PMWHR, is in full compliance with all pertaining criteria.

V. OVERSIGHT provided by the WILD HORSE FERTILITY CONTROL FIELD TRIAL PROGRAM

The Proposed Action would also adhere to all guidance and research protocol set by the BLM National Wild Horse Fertility Control Field Trial (FCFTP) program (Singer and Coates-Markle, 2002). Copies of this document can be obtained by contacting BiFO. This program requires close monitoring of all individual-based study herds in order to evaluate management-level use of the fertility control vaccine under a research protocol. On the Pryors, any wild mares receiving the

vaccine will be individually-identified and tracked regularly with non-intrusively gathered data on behavior, estrus, fertility, reproduction, survival, and any health concerns. The field studies will be conducted by seasonal and term (USGS-Biological Resource Division {BRD} and BLM) biological technicians under the supervision of BRD research biologists and the BLM wild horse and burro specialist.

VI. IMPACTS on HERD VIABILITY

Current estimates (7/27/05) place the population at 167 horses, including 28 live foals (figure 1; table 1). Total herd size could approach 170 horses by the end of the foaling season (table 1), and historical data suggests that a population ranging in size from 87 to 200 total horses has supported a genetically diverse herd in the Pryors (Cothran, 2002). There is no evidence that recent levels of natural mortality will have serious impacts on herd viability (table 1).

Dr. E. Gus Cothran, University of Kentucky, has long been recognized as a leading expert in the field of both domestic and wild horse genetic research. He has been working with the Pryor herd for well over a decade. The following statement was received (April 2005) from Dr. Cothran, regarding PMWHR herd size and viability issues:

"Any effort to reduce the Pryor Mountain Wild Horse Herd to 100 total horses for a period up to five years, so that range improvements can occur, has the potential to have little impact upon the genetic diversity of the herd. This depends upon maintaining the core of the reproducing individuals and concentrating any removals (or fertility control) on the young and the individuals that are likely past their reproductive years. If the reproductive core is maintained, this will retain most of the genetic variation in the herd.

Genetic variation in the PMWH herd is high so that any increase in the rate of loss of variation will not likely have a significant impact. However, there are risks and these must be considered. There will be an increased loss of variation compared to what would have occurred if the herd had been maintained at a larger population size. This is largely due to the high likelihood that the reproductive contribution of some individuals will be lost or reduced during the five year period. The simple act of reducing the maximum herd size reduces effective population size and a loss of reproductive contribution increases this reduction. Also, the smaller the census size the greater the risks due to natural catastrophes.

From a population viability standpoint, if there are no unexpected problems then keeping the herd at 100 head should have minimal impact. However, five years should be set as a maximum time span and if range conditions improve, herd size should be increased as soon as possible to minimize both the unavoidable impacts and the increased risks that the reduced population size exposes the Pryor herd to."

Intensive, long-term studies have shown that mares aged 3-13 years appear to primarily contribute to foal production in the Pryor herd. Generally, foal production drops considerable by the 14th year and ceases by the 16th year (FY2005 PZP EA figures 8, 11 and 13). Most mares do not live much beyond this age. Fertility control application with this herd is designed to target mares that are outside of the major core breeding age classes of 6-10 year old mares (figure 1). The intent of BLM management, at this time, is to allow the core genetic contributors within the herd to remain fertile, as recommended by Cothran.

Foal production (and survival) from the 20 older wild mares selected for fertility control in 2005 has been tabulated for the last ten years (table 3). It is evident that each individual mare has at

least one surviving progeny on the range to carry forward a component of the genetic material from the mare. Collectively these mares have contributed 150 foals to the herd, with 34% of these foals surviving to date. Some mares have produced as many as 10 foals during this period with a group average of eight produced and three surviving foals per mare. There is no evidence that contracepting these mares at this time in their life will result in an increase in the rate of loss of genetic diversity from this herd.

VII. IMPACTS on MARE PHYSIOLOGY and BEHAVIOR

From a mare physiological standpoint, PZP contraception has no impact on mare hormone secretion or developing endocrine systems. It operates as an immune response only and appears to have only temporary effects. Most development of reproductive systems, including lifetime oocyte count in the ovary, is done during the fetal stage. Research has shown that PZP has no negative impacts on the developing fetus and ensuing post-birth fertility (Kirkpatrick and Turner, 2003). Thus, if a filly is not yet sexually mature, there will be no negative impacts on her normal reproductive development. Research has shown that PZP does not appear to cause ill-effects to ovarian function unless contraception is actively repeated for more than five consecutive years on a given mare (Turner and Kirkpatrick, 2002; Kirkpatrick and Turner, 2002). Older mares on the Pryors have not been treated more than two consecutive years prior to 2005 (figure1).

There is also no evidence that contracepting these mares will impact their behaviors and social facilitation roles within the herd. Despite fictional portrayal on public websites and in popular commercial videos, horses in the Pryor herd are not difficult to access, and many members of the public, BLM and scientific community routinely observe these animals. Early behavioral research began on this herd around the time the range was established (1968), and these efforts are considered landmark studies for wild horse behavior (Feist, 1971; Feist and McCullough, 1976). To date, BLM and BRD employees have logged an average of five months of field observations during each year of study (1996-2005). Preliminary field data, collected by these trained observers, suggests no differences in mare position within the harem, distance from the stallion or estrus behavior between treated and untreated mares in this herd. Social facilitation in this herd is driven primarily by the stallions, not mares, and thus treating these older mares is not expected to have impacts on either “within or between” group interactions. These activities will, however, continue to be monitored as part of the research for individual-based trials under the FCFTP.

VIII. PUBLIC INPUT

The BiFO received 106 documents (232 pages of comments) in response to EA # MT-010-FY05-16 for the FY2005 proposed fertility control on the PMWHR. Twelve of these documents were postmarked after the 6/10/05 deadline but were retained as part of the public record. A list of individuals and groups that have responded are on file at BiFO as are all original submitted documents. Public members using Freedom of Information Act (FOIA) procedures may request these documents. Details can be provided by contacting BiFO.

All submissions were reviewed and comments were consolidated and summarized by major area of concern for BLM consideration. These areas included: use of fertility control; gathers with/without fertility control; herd size as related to genetic viability; size of the designated wild horse range; range condition and health, including results of the Natural Resources Conservation Service (NRCS) study (Ricketts, 2004); overall management of the PMWHR and an "other comments" category. Several comments submitted by public members did not specifically address the Proposed Action, or range of alternatives, as stated in the EA. All comments that pertained to AML for the herd, selection of animals for gathers, range health, range expansion, and/or revision of the Herd Management Area Plan (HMAP) are being kept on file for public scoping related to the HMAP revision.

Healthy Horses on Healthy Rangelands

Some public commented that the AML for the PMWHR, as it exists, is out-of-date or incorrectly assessed. Under BLM national policy, AML is recorded as the upper limit of a range of adult wild horses (six months and older) determined to be consistent with the objective of achieving and maintaining a thriving natural ecological balance and multiple-use relationship. This is also true for the PMWHR. The AML for the Pryors was revised in July 1992 and set at the narrow range of 95 $\pm$ 10% horses. This revision was primarily based on range condition at that time, as well as the withdrawal of National Park Service lands from wild horse use (MT-025-2-18). Since 2000, BLM has been reevaluating AML (during ongoing herd viability research) and has been conservative in terms of herd size reduction until necessary data were in place.

Prior to 1998, BLM monitoring indicated that the designated range was showing a small upward trend in range health (report available by contacting BiFO). Since then, a more thorough study (Ricketts, 2004) has indicated that cumulative impacts, including weather, drought and grazing, have resulted in an apparent downward trend on 76% of the range. Ongoing agency discussions have focused on opportunities for range improvement projects (using recommendations from Ricketts [2004] and Wockner [2004]) commencing in 2006. These projects are designed to assist with the restoration of range health on the designated range and may take several years to generate a desired result.

Many public comments concerned the status of range expansion activity. Any and all efforts to evaluate range size and possible expansion (whether private, BLM, FS and/or NPS lands) to benefit the wild horses will involve more extensive interagency discussion. There are many legal issues and mandates that must be addressed before any level of resolution can be achieved. These efforts are considered long-term and beyond the scope of the current EA.

BLM must manage the PMWHR within a balanced program that considers all public values including wild horses, wildlife, watershed, recreation, archeological and scenic values (Federal Register, Vol. 33, No. 173, September 12, 1986). Over the long-term, BLM has recognized Spanish phenotype in the Pryor herd and has worked to conserve herd viability, works with the State regarding wildlife populations and manages for healthy wildlife habitat, does not manage for domestic livestock on the PMWHR, has successfully minimized illegal cattle trespass activity within lower elevation range, is progressing with range improvement projects within the designated range, and continues to evaluate range expansion opportunities. Perhaps the biggest impacts to range health are weather and drought, but these variables cannot be controlled, and in

the short-term BLM must respond to management concerns. Present range conditions cannot afford a "do-nothing" approach to management. Since reducing herd growth may alleviate grazing impacts to allow some range improvement without jeopardizing the genetic diversity of the herd, the decision to partially suppress herd growth seems appropriate at this time.

Herd Size and Viability

The primary concern raised in public comments for this EA related to viable population size and existing levels of natural mortality. Many commenters felt that fertility control on age-specific older mares, in combination with existing levels of natural mortality, would limit population growth resulting in a less than viable herd size over time. The BLM believes these impacts have been analyzed in the EA and public concerns have been further responded to in this DR. Additional tables and figures have been developed to help the public understand information that was used in the decision-making process (figures 1, 2, 3; tables 1, 2, 3).

It was stated in the EA that loss of genetic variability from the PMWHR herd is not presently a critical issue, and there are several alternative management strategies that can be used to promote genetic conservation within the herd (BLM Wild Horse and Burro Population Viability Forum Recommendations, 2000). Some comments did not support enhancing herd genetic diversity by introducing one or two young mares every horse generation. Other comments questioned the legality of introducing mares that might be progeny of previously adopted Pryor horses. Nationally, the BLM has participated in horse introductions to supplement wild horse herds for some time, although not with domestic and/or previously adopted horses. The latter is not supported by current interpretations of the WFRHBA. The BiFO is currently working with Dr. Phil Sponenberg, Virginia Tech, to help identify a free-roaming herd that could potentially be used as a source of genetic supplementation for the Pryor herd. Dr. Sponenberg has worked with the Pryor herd for over a decade and is well-published with respect to Spanish horse characteristics. He also feels very strongly that a legitimate claim can be made that the Pryor herd is a genetic resource and cannot be reconstituted from common domestic breeds of horses (Sponenberg, pers. comm.).

Selective-Use of Fertility Control

Some commenters suggested using fertility control on selected mares for more intensive management of the genetic resource. BLM feels this violates the minimum feasible management clause of the WFRHBA. Fertility control is a tool for herd management, as are gathers. These tools are designed to supplement any natural impacts on herd demographics. Gathers are used for necessary and immediate herd size reduction while fertility control is used to reduce herd recruitment in efforts to stabilize herd growth and ultimately herd size. Stabilization of herd size, in time, will provide for less variability in grazing impacts on the forage base and allow for range recovery and improvement opportunities. Both management tools have been best employed, within the national BLM wild horse and burro program, using age-specific or herd-wide protocol. Concerns have been expressed that intensive and selective use of either tool, on an individual animal basis, is inappropriate under the WFRHBA.

NRCS Pryor Mountain Wild Horse Range Survey and Assessment

BLM is responsible for and has done its own range monitoring for actual use, forage utilization and trend as required by law. These data have been used to support determination of excess

horses prior to the scheduling of gathers on the Pryors in 1997, 2001 and 2003. These data continue to be collected and would, by law, be used to support any future gather activity. Due to growing interagency and public concerns about range health, however, NRCS was chosen for a more extensive range survey (NRCS Pryor Mountain Wild Horse Range Survey and Assessment, Ricketts, 2004) because this agency is acknowledged as the technical experts in rangeland health analyses. Results of this study are available by contacting BiFO or are accessible on the BLM national homepage: http://www.blm.gov/nhp/spotlight/state_info/mt/pryor.html.

A few commenters requested clarification and/or interpretation of the survey while others were concerned that the study represents range health and production during drought years. In particular, there were concerns about reduced estimates of forage production on the designated range. The NRCS has responded to this concern in the past with the clarification that collected field data were "normalized" for more average annual precipitation levels. Once annual forage production levels were determined, NRCS was able to provide an estimate of the number of horses the range could support given the distribution and seasonal use patterns of the herd. NRCS did not further subdivide production levels to accommodate other grazing species on the range based on the results of previous competitive interaction studies (Kissell, 1996).

The BLM made this document available to the public on July 9, 2004 and held an open meeting on September 9, 2004 in efforts to help the public understand the results of the NRCS study. The BLM is planning to more fully address survey results during the herd plan revision process. At this time, however, BLM encourages public members to review the original document for appropriate definitions and clarification of methodology, as those issues are beyond the scope of this EA and DR. Two reviews of the NRCS study were submitted, in response to the EA, which questioned methodology and results of the survey. These documents are being submitted to the NRCS for review and response.

Cumulative Impact Analysis

Some comments addressed an apparent lack of cumulative impact analysis in the EA. During development of the EA, the BLM is required to do an analysis of cumulative impacts from foreseeable activities over a reasonably foreseeable future. Ongoing intra-agency and interagency discussions have focused on opportunities and logistics for range improvement projects (prescribed fire, water developments) commencing in 2006. These projects are designed to assist with the restoration of range health on the designated range and may take several years to generate a desired result. In each case, activity plans (EAs) will be released for public comment, prior to starting the project. The BLM also continues to evaluate potential range expansion, but it is unlikely that any opportunities will happen in the reasonably foreseeable future.

Thus, interdisciplinary analysis, during development of the EA, did not identify any additional activities (other than those stated and analyzed) that would necessarily cause impacts to either herd growth or size. In using the Jenkins Population Model (Version 1.40 of WinEquus available on http://unr.edu/homepage/jenkins) to assess possible cumulative impacts (from the natural cycle of births and deaths, variable predation, fertility control, and gather activity) on the wild horse herd, BiFO has satisfied required impact analysis for the Proposed Action under the scope of the EA.

IX. FINDING of NO SIGNIFICANT IMPACT

The BLM has reviewed this environmental assessment including the explanation and resolution of any potentially significant environmental impacts. The BLM has determined that the Proposed Action will not have any significant impacts on the human environment and that an EIS is not required. The BLM finds that implementation of the Proposed Action would not result in unnecessary or undue degradation of the public lands. The BLM has determined that the Proposed Action is in conformance with the appropriate and approved land use plans.

X. APPEALS

Within 30 days of the date of the decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(a) and (c). If an appeal is taken, your notice of appeal must be filed in the Billings Field Office, P.O. Box 36800 (5001 Southgate Drive), Billings, Montana, 59107. Within 30 days after filing a Notice of Appeal, you are required to provide a complete statement of the reasons why you are appealing. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and Petition for a Stay must be submitted to (1) the Interior Board of Land Appeals, Office of Hearing and Appeals, U.S Department of the Interior, 801 North Quincy St., Suite 300, Arlington, VA 22203, (2) the Field Solicitor's Office, Pacific Northwest Region, PO Box 31394 (316 North 26th Street), Billings, MT, 59107 and (3) Billings Field Office, P.O. Box 36800 (5001 Southgate Drive), Billings, Montana, 59107. The original documents should be filed with this latter office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay
Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;

2. The likelihood of the appellant's success on merits;

3. The likelihood of immediate and irreparable harm if the stay is not granted; and

4. Whether the public interest favors granting the stay.

XI. SIGNATURES

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Approved by: Sandra S Brooks Date 7/29/05
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